

In the Matter of the Adoption of Rules and Regulations to Implement the Provisions of 26 DEL. C. CH. 10 Relating to the Creation of a Competitive Market for Retail Electric Supply Service (Opened April 27, 1999; Re-Opened January 7, 2003; Re-Opened September 22, 2009; Re-Opened September 7, 2010; Re-Opened July 17, 2012))))))))	PSC REGULATION DOCKET NO. 49
--	---------------------------------	------------------------------

Pursuant to 26 Del. Admin. C. § 1001.2.22.2, the Coalition for Community Solar Access (CCSA), Sierra Club, and the Delaware Solar Energy Coalition (collectively, the Joint Parties), submit this Answer to the Delaware Division of the Public Advocate's (DPA) Motion for Rehearing and Reconsideration of Order No. 9965 (the Motion).

On September 15, 2021, the Delaware Public Service Commission (Commission) issued Order 9883 in Reg. Docket 49 in anticipation of Governor Carney signing Senate Bill 2 on September 17. This legislation amends the Renewable Energy Portfolio Standards Act at §§ 352 and 360 of Title 26 of the Delaware Code and the Electric Utility Restructuring Act of 1999 at §§ 1001 and 1014 of Title 26 to accelerate the adoption of Community-owned energy generating facilities also known as Community Energy Facilities (CEFs). The Joint Parties have filed comments and follow up comments in this matter. On January 26, 2022, the Commission issued Order 9965 adopting regulations for CEFs. On February 9, 2022, the DPA filed the Motion, asking the Commission to remove Section 16.10.4 of the approved regulations.

As the DPA noted in its Motion, the Joint Parties do not necessarily take a position on whether Subsection 16.10.4 should be included in the regulations.¹ However, the Joint Parties do not support striking paragraphs 59-62 in their entirety, as contemplated in DPA's proposed order attached to the Motion. If the Commission is inclined to grant the Motion or modify its previous

1

Order 9965 in any way, the Joint Parties recommend that the Commission retain the substantive discussion of cost recovery in Paragraphs 59-62, which explains the Commission's finding that Delmarva will file for approval of a mechanism for recovery of the billing credits it will provide to CEF subscribers – not from CEFs but from its customers.

We understand that cost recovery is a complex and nuanced issue and we look forward to participating in the upcoming discussions on that topic. In particular, the Sierra Club expresses concern that it would not be appropriate to assign a long-term, relatively unchecked line item or surcharge to ratepayers' bills moving forward. They feel that this would not allow any costs from CEFs to be viewed in the full context of rates being applied to consumers, as is the case with other relevant matters.

Importantly, the Commission speaks through its orders, so it is imperative that the order issued in this proceeding explain the Commission's decisions regarding the regulations. The Joint Parties are concerned that removing this important language in Paragraphs 59-62 of Order 9965 could create risk for either Delmarva or CEFs, which was not the intention of the legislation. Therefore, if the Commission is inclined to modify the regulations and Order No. 9965 to remove Subsection 16.10.4 as DPA requested in the Motion, the Joint Parties recommend that the Commission modify paragraphs 59-62, while retaining the substantive discussion regarding bill credit cost recovery from Delmarva customers (rather than from CEFs), as follows:

59. ~~Subsection 16.10.4 Delmarva's recovery of the billing credits. Subsection 16.10.4 authorizes Delmarva "to recover the credited supply and distribution costs provided to Subscribers and the Community Energy Facility in accordance with its tariff." While Delmarva's tariff does not at this time specify how such recovery will take place, t~~The participants agree ~~that subsection 16.10.4 paves the way for~~ Delmarva ~~to~~ should file for approval of a mechanism for recovery of the billing credits it will provide to CEF subscribers - not from CEFs but from its customers. In this way, Delmarva will be socializing the cost of the billing credits across all or part of its customer base, as it does now for the billing credits it provides for net-metered rooftop solar generation via its distribution rate, which is set by base rate cases.⁹⁰

60. The DPA argued that because Senate Bill 2 provides that CEFs "shall be responsible for any additional costs incurred by the electric distribution company ...," Delmarva must recover the billing credits from the CEFs as an "additional cost."⁹¹ The Commission disagrees that the intent of the General Assembly was to include the billing credits as an "additional cost" to be collected from the CEFs. As many of the participants asserted, collecting the billing credits from the CEFs would, in effect, take away the full retail

rate⁹² compensation the General Assembly provided to CEF subscribers under Senate Bill 2.⁹³

61. Moreover, it is unclear that the billing credits for distribution are an "additional cost" or whether they are more accurately viewed as a reallocation of existing distribution costs necessary to serve CEF subscribers that will be socialized across Delmarva's customer base (in a manner to be determined later).⁹⁴ The billing credits for generation are not an "additional cost" because much of the supply cost will be "recovered" by virtue of the savings to Delmarva from the avoided supply purchases from its wholesale suppliers (due to the generation from the CEFs),⁹⁵ with any remaining supply costs (due in part to the difference between the price of wholesale supply and Delmarva's standard offer service rates) reallocated from CEF subscribers to Delmarva's customer base (in a manner to be determined later).

62. ~~By approving subsection 16.10.4, t~~The Commission is not approving any particular mechanism for recovery of the billing credits and, to be clear, is not determining whether such recovery of the distribution credits will take place via rate rider (as Delmarva prefers)⁹⁶ or via the distribution rate itself or whether such recovery of the remaining supply costs will be recovered via the PCA (as Delmarva prefers)⁹⁷ or otherwise. The Commission is acknowledging, however, that Delmarva's recovery of the billing credits from its customers (rather than the CEFs) is appropriate, given the intent of Senate Bill 2 to facilitate the development of CEFs by applying the billing credits against both the supply and distribution rates of CEF subscribers.

Thank you for your continued effort to advance community solar in Delaware.

Community solar companies have already invested significant time and money into building a cleaner grid for all Delaware residents and they are excited to get to work building these projects to serve Delaware customers.

Respectfully submitted,

Laurel Passera
Policy Director
COALITION FOR COMMUNITY SOLAR
ACCESS

Dustyn Thompson
Volunteer and Community Outreach Coordinator
SIERRA CLUB, DELAWARE CHAPTER

Dale Davis
President, CMI Solar & Electric, representing
DELAWARE SOLAR ENERGY COALITION